

7-17-12
ORIGINAL

Lease Record Number _____

2012-0229-PW/MS

LEASE AND OPERATING AGREEMENT

THIS AGREEMENT for lease and operation of the wastewater treatment plant at the New Mexico State Penitentiary ("Penitentiary") is entered into on this 17th day of July, 2012, by and between Santa Fe County "County" or "Lessee" and the New Mexico General Services Department, Property Control Division, and the New Mexico Corrections Department, herein referred to as "State" or "Lessor".

WHEREAS, the State of New Mexico Property Control Division of the General Services Department owns a wastewater treatment plant and acres of land north of the Penitentiary, which serves the wastewater needs of the Penitentiary, of which the Department of Corrections is the Lead Agency,

WHEREAS, for at least ten years, the County of Santa Fe has operated and maintained the wastewater facility under contract with the Penitentiary;

WHEREAS, the County is willing and able to continue to provide water reclamation plant operations, maintenance, repairs, and improvements to the wastewater facility, as it has for most of the past ten years, in compliance with applicable state and federal regulations;

WHEREAS, Santa Fe County intends to develop the wastewater facility into a regional water reclamation facility;

WHEREAS, the continued services by the County's expert personnel for the operations of the wastewater facility would benefit both the people of Santa Fe County and the State of New Mexico, by establishing a mutually beneficial long term relationship;

NOW THEREFORE, in consideration of the foregoing, the covenants herein contained and other good and valuable consideration, Lessor does hereby lease, demise and let unto Lessee, the property herein described for the term set forth herein in accordance with the conditions herein set forth. The parties agree as follows:

1. **DESCRIPTION:** The premises, herein after referred to as "Premises" leased herein, is the real property, generally located in S1/2 of Section 25, T16N, R8E, in Santa Fe County and, more particularly, described on Exhibit A, including the wastewater facility and related infrastructure within the Premises, specifically excluding the force main and lift stations used for conveyance of wastewater originating solely from the Department of Military Affairs complex. In addition the Premises shall include 134.64 acres of land for application of treated effluent and secondary sludge application, as well as those items of equipment listed in Exhibit B, and any expansion or modification of the Facility that may occur after the effective date of this Lease.
2. **TERM:** The term of this Lease shall be Twenty-four (24) years beginning on the date of approval by the State Board of Finance and ending September 30, 2035. Lessee shall have the option to renew this Lease for one like term of twenty-four (24) years by providing written notice no later than ninety (90) days prior to the expiration of the Lease.

3. **LESSEE'S RENT:** As consideration for the use of the Premises, Lessee agrees to provide wastewater treatment service as needed by the Penitentiary, the Department of Military Affairs complex, and any related facilities that the Penitentiary or the New Mexico Department of Military Affairs complex may develop in the future provided that they comply with all applicable conditions of water and wastewater ordinances of the County. Lessee will pay no cash rent.

Lessee shall be entitled to all of the treated water generated by the wastewater facility. Lessee will negotiate in good faith with Lessor in the future if Lessor desires to use any treated water generated from effluent from the Penitentiary.

4. **CONDITION OF PREMISES:** Lessee hereby acknowledges that Lessee has made an on-site inspection of the Premises, that no representations as to the condition of the Premises have been made by Lessor, and Lessee hereby accepts the demised Premises in its present condition.
5. **IMPROVEMENTS:** Lessee may make changes or improvements to the Premises as necessary to improve the Premises and wastewater facility and to provide wastewater service to Lessee's wastewater customers, and perform other work necessary to support wastewater reclamation, water reuse, and aquifer storage, including any work necessary to promote energy conservation and diversification in connection with such primary uses of the Premises. Such improvements shall include, but not be limited to, upgrades required to maintain the NPDES permit, the discharge permit and other regulatory requirements for consumer water use.

Improvements to the Premises shall be submitted to the Lessor for review and approval. Prior to implementation of improvements by Lessee, Lessee shall provide to Lessor a written detailed description of proposed improvements accompanied by cost estimates and a sufficient description to enable Lessor to provide comment. Lessor shall provide timely comment and approval to Lessee regarding Lessee's improvements and such comment shall be provided within thirty (30) days of Lessee's submission of proposed improvements to Lessor. Lessor's approval shall not be unreasonably withheld, conditioned or delayed. If said approval is not provided by Lessor within the thirty (30) day period Lessee's improvements shall be deemed approved.

During the last five (5) years of the Lease term, and the last five (5) years of any renewal thereof, and prior to installation of improvements of the wastewater facility, Lessee may request that Lessor share the costs or expense of the improvements if such improvements are not depreciable over the remaining term of the Lease. The Parties agree to enter into a cost sharing agreement for the costs of the improvement based upon the useful life of the improvement. The Lessee shall be responsible for the portion of the costs allocated over the remaining term of the lease and Lessor shall be responsible for the costs allocated after the remaining term of the lease until the improvement is fully depreciated over its' useful life. If the

request is during the original lease term the parties may agree to exercise the option to renew the lease early and the Lessee would then be responsible for the entire cost of the improvement.

6. **MAINTENANCE:** Lessee shall be fully responsible for keeping and maintaining the Premises and all improvements hereto in the same condition the Premises was in upon commencement of this Lease, reasonable wear and tear excepted, and shall not suffer or permit any continuing nuisance thereon. Lessee shall effectuate, at its sole expense, any repairs to the wastewater facility necessary for the maintenance and continued operation of the facility. Lessee shall permit Lessor to inspect the Premises upon reasonable notice to the Lessee.
7. **EARLY TERMINATION BY PARTIES:** Lessor or Lessee may terminate this Lease prior to its expiration as set forth in Paragraph 2 of this Lease, without penalty, by giving one hundred eighty (180) days advance written notice, upon the following events:
 - A. Early termination by Lessor, if the New Mexico Legislature fails to make sufficient appropriations to the Lessor to carry out the purpose or terms and conditions of the Lease;
 - B. Early termination by Lessee, if the Santa Fe County Board of County Commissioners fails to make sufficient appropriation to the Lessee to carry out the purpose or terms and conditions of the Lease; or if Lessor declines Lessee's request to share the costs or expenses of non-depreciable improvements to the wastewater facility.
8. **ASSIGNMENT AND SUBLEASING:** Lessee may not assign or sublease this Lease without the express written consent of Lessor and the State Board of Finance. Lessee may sublease the acreage used for discharge upon the express written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Any sublease by Lessee under this provision shall be limited to farming or ranching purposes.
9. **PERSONAL PROPERTY:** All personal property of the Lessee, its employees, agents, customers and invitees kept on the Premises shall be at the sole risk of the Lessee, and Lessor shall not be liable for any damage thereto, unless damages are caused by the actions of the Lessor or its agents.
10. **UTILITIES AND COSTS OF OPERATION:** Commencing upon the effective date Lessee shall be responsible for the provision and payment of any and all utilities and services needed for the operation of the wastewater facility, and shall make provision for the payment of such utilities, including but not limited to electricity, gas, water, phone and broadband. Lessee shall install any meters and other devices as necessary to record or measure wastewater treatment or other

services provided to Lessor. Lessee agrees to install meters within the first six (6) months of the term of this Lease.

Lessor shall purchase and install a meter on the sewage line from the Department of Military Affairs in order to measure the sewage conveyed to the wastewater facility.

11. **RATES:** Lessor shall be entitled to dispose of wastewater at the wastewater facility, in accordance with rules and ordinances of the Lessee, and consistent with permits issued by the New Mexico Environment Department and the Environmental Protection Agency.

Lessee has established rates for disposal of wastewater through a cost of service study and those rates are reflected in the Rate and Fee Schedule attached hereto as Exhibit C. Lessee may from time to time modify the Rate and Fee Schedule. Lessor shall pay fifty percent (50%) of the rate charged to other customers in the same rate class as established by the Lessee.

12. **COMPLIANCE WITH LAWS:** Lessee shall comply with all applicable federal, state and local laws and ordinances in the use and operation of the wastewater facility, including laws pertaining to water quality, safety, and protection of the environment. Lessee or its contractor(s) shall, at its expense, make application for and obtain any and all permits necessary for the operation of, and any necessary construction, improvements or expansion of the Premises.
13. **LESSOR'S COOPERATION:** Lessor shall cooperate with Lessee in complying with all pertinent regulatory or legal requirements relating to the operation and/or regulatory permitting requirements related to parts of the wastewater facility which are under the control of the Lessor.
14. **DISCRIMINATION:** Lessee, with respect to employment of its staff and to those persons using the Premises or receiving services from Lessee, shall not discriminate unlawfully with respect to race, sex, national origin, physical handicap, religion or as to any other class protected against discrimination by applicable state or federal law.
15. **NOTICE:** All notices relating to this Lease shall be in writing and shall be delivered to the following addresses and, if mailed, sent certified or registered mail:

LESSOR: Director, Property Control Division
P.O. Box 6850
Santa Fe, New Mexico 87502

and,

Secretary of Corrections
New Mexico Corrections Department

P.O. Box 27116
Santa Fe, New Mexico 87502-0116

LESSEE: Director, Utilities Department
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504

and,

County Attorney
Santa Fe County
102 Grant Avenue
P.O. Box 276
Santa Fe, New Mexico 87504-0276

16. **WAIVER:** No failure on the part of Lessor or Lessee to exercise, or delay in exercising any right, power or privilege hereunder, shall preclude other or further exercise thereof, or exercise of any other right, power or privilege. The right or limitations herein provided are cumulative and not exclusive of any rights and remedies otherwise provided by law or equity.
17. **EXPIRATION:** Upon expiration of the term, including any optional renewal or early termination of this Lease, or upon termination of this Lease pursuant to Paragraphs 7 or 20, Lessee shall peaceably surrender to Lessor possession of the Premises and all improvements made by Lessee or Lessor thereon in good condition and repair, reasonable wear and tear excepted.
18. **PROPERTY INSURANCE:** Lessee shall carry and maintain in full force and effect during the term of this Lease, at Lessee's sole cost and expense and as additional rent hereunder, insurance against damage to the Premises, including the wastewater facility. Any such insurance policy or policies shall name the Lessor as an additional insured. Insurance proceeds shall immediately be utilized to cover damage to the leased Premises or wastewater facility.
19. **PUBLIC LIABILITY INSURANCE:** Lessee shall carry and maintain in full force and effect during the term of this Lease, at Lessee's sole cost and expense, public liability insurance in the form and containing coverage limits provided for in the Tort Claims Act, as amended from time to time.
20. **DEFAULT OF LESSEE AND REMEDIES OF LESSOR:** The following shall be "Events of Default" under this Lease:
 - A. Lessee's abandonment of the Premises for a period of thirty (30) continuous days;

- B. Lessee's breach of, or default under any material term, covenant or condition of this Lease; or
- C. Lessee's failure to keep in force insurance policies required by this Lease;
- D. Lessee's use of the Premises for any purpose that is not authorized by this Lease.

If any Event of Default occurs, Lessor shall give Lessee notice by certified or registered mail specifying the Event of Default that has occurred. Unless the Event of Default is cured within thirty (30) days after receipt of such notice, or unless within the thirty (30) day period Lessee shall have commenced and shall continue to take action to cure the Event of Default, Lessor may terminate this Lease by giving Lessee twenty (20) days written notice thereof by certified or registered mail, and this Lease shall be terminated.

Lessee shall not be liable for any future rental from the date of the termination if this remedy by Lessor is pursued, and Lessor shall not have any further obligation to Lessee under this Lease.

- 21. **USES TO BE MADE OF THE PREMISES:** The Premises shall be used for the operation of the wastewater facility and other related purposes, including the purposes and uses allowed under Paragraph 8. In no event shall the Premises be used for any unlawful purpose or other purpose constituting or creating a public or private nuisance or inconsistent with the terms of this Lease.
- 22. **INGRESS AND EGRESS:** The Lessee shall have the right of ingress and egress to the Premises through Lessor's property by existing roads. Lessee shall improve the existing roads to the wastewater facility to the extent Lessee deems necessary. The road improvements shall be solely at Lessee's expense.

At the site where the access road meets the new road constructed by the Lessee, Lessee shall ensure that there is a barricade to prevent use or access by inmates and other uninvited individuals.

- 23. **CONDEMNATION:** In the event that any or all of the Premises is subject to Special Alternative Condemnation proceedings under § 42-2-3 NMSA 1978 by any governmental agency prior to the termination of this Lease, if not specifically named in the petition, Lessee may intervene to appear, plead and defend its leasehold interest under this Lease without objection by Lessor.
- 24. **AMENDMENTS IN WRITING:** This Lease shall not be altered or amended except by instrument in writing executed by the parties and also approved by the State Board of Finance.
- 25. **MERGER OF PRIOR AGREEMENTS:** This Lease incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Lease, and all such conditions, understandings and agreements

have been merged into this written Lease. No prior condition, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Lease.

26. **GOVERNING LAW:** This Lease shall be governed by and interpreted in accordance with the laws of the State of New Mexico.
27. **TORT LIABILITY:** By entering into this Lease, the parties and their “public employees” as defined in the New Mexico Tort Claims Act do not waive any sovereign immunity or other defense or other limitation of liability. No provision of this Lease modifies or waives any provision of the New Mexico Tort Claims Act.
28. **THIRD PARTY:** No provision of this Lease is intended to create in the public or any member thereof any third-party beneficiary or to authorize anyone not a party to this Lease from maintaining suit there under.
29. **LESSOR/LESSEE RELATIONSHIP:** Nothing in this Lease is intended or should be construed in any way, the Lease is intended or should be construed in any way, to create or establish a partnership relationship between the Lessor and Lessee or to establish either party or an employee of either party as an agent, representative or employee of the other for any purpose whatsoever.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this agreement this 13th day of July, 2012.

LESSOR: State of New Mexico General Services Department

Charles A. Gans
Director, Property Control Division

STATE OF NEW MEXICO)

) ss.

COUNTY OF SANTA FE)

The foregoing instrument was acknowledgement before me this _____ day of _____, 20__ by Property Control Division.

Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT

[Signature]
Secretary of the New Mexico Corrections Department

STATE OF NEW MEXICO)

) ss.

COUNTY OF SANTA FE)

The foregoing instrument was acknowledgement before me this 17th day of July, 2012 by the Secretary, New Mexico Corrections Department.

Joni A. Rodas
Notary Public

My Commission Expires: October 26, 2014

LESSEE: Santa Fe County

Santa Fe Board of County Commissioners

Approved as to form:

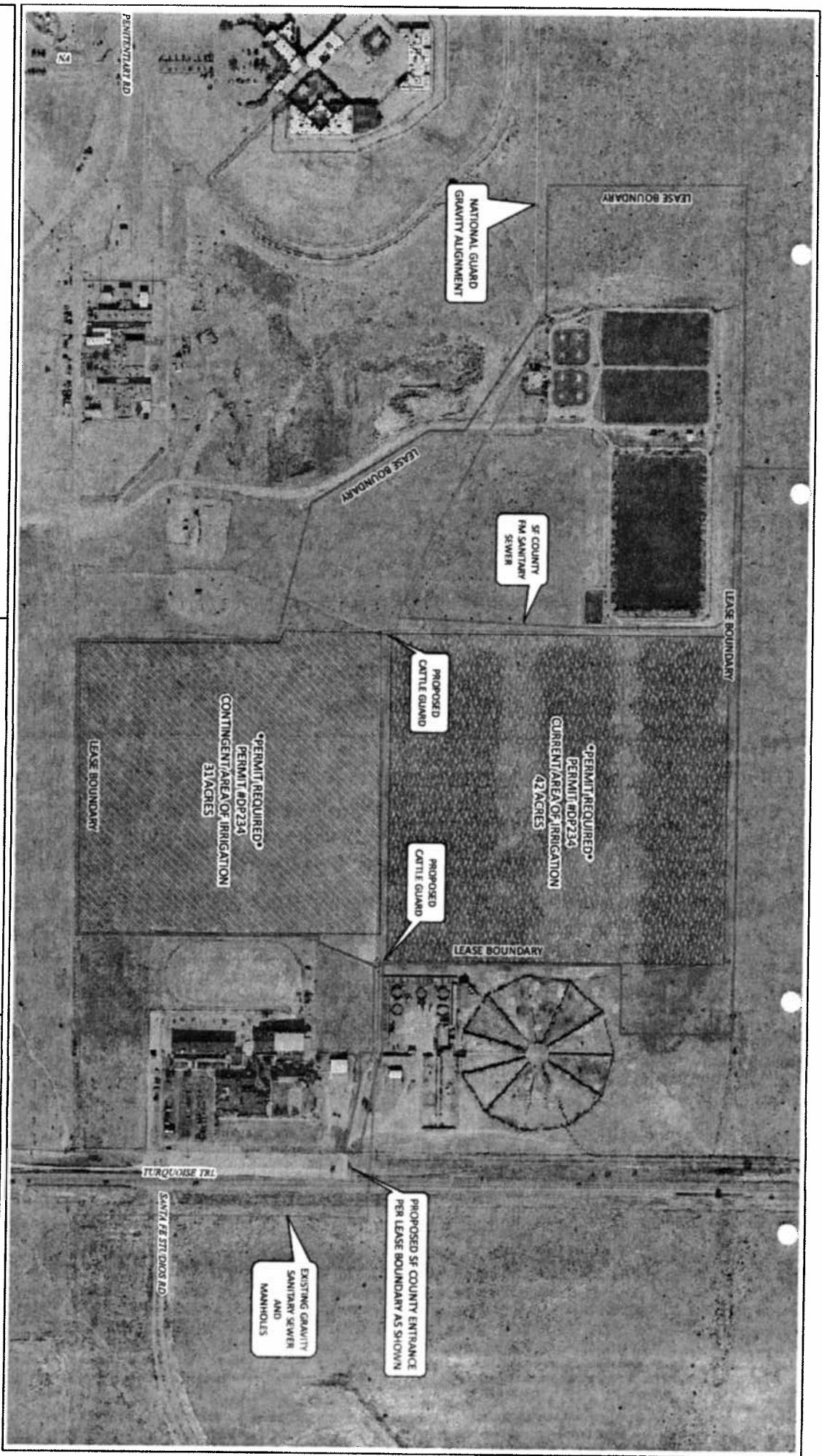
Liz Defonics Date: 7/10/12
Virginia Vigil, Chair
Liz Defonics,

[Signature]
Stephen C. Ross
Santa Fe County Attorney

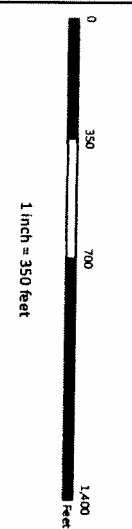
ATTEST TO:
Valerie Espinoza ^{by vt} Date: 7-13-12
Valerie Espinoza
Santa Fe County Clerk

Finance Department

Teresa Martinez Date: 7/12/2012
Teresa Martinez, Finance Director



- Legend**
- Quill Lease Boundary
 - FM
 - GPS Roads All
 - SF County Sewer/Irrigation Gravity
 - Effluent



This information is for reference only. Santa Fe County maintains no liability for errors associated with the use of these data. Users should verify the accuracy of the data. Aerial Photography from 2008.

	NM State Penitentiary WW System Premises SF County Leased Property	
	Santa Fe County Utilities Department	PC 06-26-12 Sheet No. 1 of 1

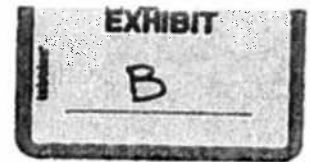


Exhibit B

General Inventory of Equipment of the Premises

A. General office equipment

B. Laboratory equipment

Bottles, dishes, filters, funnels, flasks, stoppers,
forceps, glass rods, touch counter, microscope,
cover glasses, nitrogen and oxygen analyses
packs, dissolved oxygen meter,
PH electronic tester and various pipets

C. Pumps, aerators, tools and equipment

**SANTA FE COUNTY
UTILITIES DIVISION
EFFECTIVE JULY 1, 2011**

WATER RATES & FEE SCHEDULE

WATER METER BASE CHARGE PER MONTH		
Meter Size	Residential	Non- Residential
5/8"	\$14.50	\$30.68
3/4"	\$15.68	\$43.59
1"	\$17.99	\$69.42
1 1/2"	\$38.99	\$133.99
2"	\$40.42	\$211.46
3"	\$61.08	\$407.77
4"		\$484.45
6"		\$964.05
8"		\$1,539.58
10"		\$2,138.00

WATER USAGE CHARGE PER MONTH PER 1,000 GALLONS		
Quantity	Residential	Non-Residential
First 5,000 Gallons	\$6.12	\$5.91
Next 5,000 Gallons	\$8.43	\$8.16
Next 5,000 Gallons	\$13.02	\$12.65
Above 15,000 Gallons	\$17.62	\$17.07

Quantity	Wholesale 1	Wholesale 2	Mutual Domestic
Per 1,000 Gallons	\$5.47	\$4.01	\$3.22

* Wholesale 1 - Potable Water * Wholesale 2 - Non-Potable Water

WATER SERVICE CONNECTION FEE				
Meter Size	Residential	Non-Residential	Wholesale	MD/Gov/ Inst
5/8" - 3/4"	\$2,750			
1" - 1 1/2"	\$3,385			
2" - 3"	\$6,835			
4"		\$18,602	\$18,602	\$16,742
6"		\$31,925	\$31,925	\$28,727
8"		\$92,377	\$92,377	\$83,135
10"		\$129,769	\$129,769	\$116,792

WATER SERVICE STANDBY FEE / RECONNECT FEE / SURCHARGE	
Standby Fee	\$3.55 Per Month
Reconnect Fee	\$90.00
State Surcharge per 1,000 Gallons	\$ 0.03

BULK WATER	
Commercial	\$.02 per gallon
Residential	\$.01 per gallon

SEWER RATES & FEE SCHEDULE

SEWER BASE RATE PER MONTH	
All Sewer Services	\$6.54

SEWER USAGE RATE PER MONTH		
Quantity	Residential	Non-Residential
Per 1,000 Gallons	\$3.50	\$3.50

Based on Average monthly winter usage (December, January, February)

SEWER SERVICE CONNECTION FEE		
Fixture Unit Equivalents (FUE)	Residential	Non-Residential
First 20	\$180	\$10 Each
>20	\$10 Each	\$10 Each

SEWER SERVICE STANDBY FEE	
All Lots	\$7.00 Per Month

Late Payment Penalty of 1.5% per month of Total Balance in Arrears
Insufficient Funds Penalty: As Determined by County Treasurer

<p>AFTER HOUR EMERGENCY 1-866-885-6623</p>
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Santa Fe County Utilities Division

Physical: 424 NM Highway 599

Santa Fe, NM 87507

Mailing: P.O. Box 276

Santa Fe, New Mexico 87504

505-992-9870

www.santafecounty.org